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In The

Supreme Court of the United States

October Term 1980

No. 80-1520

LINDA E. SANGSTER,

Petitioner,

—against—

UNITED AIR LINES, INC.,

—and—

AIR LINE PILOTS ASSOCIATION, INTERNATIONAL,

Respondents.

BRIEF OF AIR LINE PILOTS ASSOCIATION, INTERNATIONAL IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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QUESTION PRESENTED

Whether the Court below correctly denied back pay under Title VII of the Civil Rights Act of 1964 to an individual plaintiff who willfully and completely removed herself from the labor market, especially after she voluntarily quit a higher-paying, higher-status supervisory position than the position she was denied, and after she had voluntarily accepted and held the higher-paying position for several years.

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BRIEF OF AIR LINE PILOTS ASSOCIATION, INTERNATIONAL IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

DECISIONS BELOW

In addition to the decisions and judgments set forth in the Appendix to the Petition for Certiorari (hereinafter "App."), the Judgment of the District Court denying

petitioner's claim for back pay is set forth in the Supplemental Appendix, annexed hereto.

STATEMENT OF THE CASE

This lawsuit involves the claim of one individual, Linda E. Sangster, under Title VII of the Civil Rights Act of 1964. No class-wide relief is sought.

Sangster was employed by United Air Lines as a flight attendant from November 24, 1961 until May 27, 1966, when she voluntarily accepted promotion into the higher-paying position of stewardess-supervisor. Sangster v. United Air Lines, Inc., 438 F. Supp. 1221, 1224 (N.D. Cal. 1977). While employed as a supervisor, Sangster married, and pursuant to United's "no-marriage" policy, lost any continuing rights to return to her former flight

attendant position.* Sangster remained in the supervisory position with United until July 16, 1969, when she voluntarily quit.

Sangster was not employed for a single day in the eight years following her voluntary resignation (633 F.2d at 866; App. A, p.6a); she voluntarily dropped out of the labor market. During this eight year period, Sangster never applied to United or to any other airline for employment, "either as a stewardess or in a supervisory or other capacity", 633 F.2d at 866, App. A, p.6a, despite her knowledge of the

* Sangster's Statement of the Case contains numerous inaccuracies. For example, Sangster was never required to be a member of the union and the challenged "no-marriage" policy was unilaterally maintained by United Air Lines. In addition, the Statement contains many purported "facts" concerning matters such as the timing of the filing of her EEOC charge, and her extensive delay in processing her claim, which are totally irrelevant to the single issue she purports to present. We have ignored responding to these extraneous matters and have limited our Statement to the issue at hand.

availability of such positions, 633 F.2d at 868, App. A, p.13a, and even though a supervisory position was available which might have enabled her to fly with her husband, a pilot for United.

Sangster's "efforts at obtaining other positions were minimal." 633 F.2d at 866, App. A, p.6a. While she allegedly reviewed classified ads, "there is no evidence that she made any calls with reference to her perusal of the classified ad section and we are talking of a period of almost 8 years from July 1969 to May 1977." App. C, p.68a. In this same eight year period, she made but six applications for employment of any kind, and only two of those applications were made before she consulted an attorney in December, 1975. App. C, p.69a. Sangster never registered with the state employment service or with any employment agency, never applied for unemployment insurance, and never took

any courses of any type to improve and/or acquire any skills. App. C, p.69a. The record revealed that Sangster was interested in one job only: the same job for the same employer which she was allegedly denied. App. C, pp.69a-71a.

In light of the foregoing, the District Court understandably concluded, in rejecting Sangster's claim for back pay, that she

> "...did nothing in mitigation of damages for the 8-year period. This plaintiff does not come anywhere near the minimum standards and her conduct was so deficient as to constitute an unreasonable failure to seek employment." App. C, pp.69a-70a.

The Court of Appeals found that the District Court had correctly analyzed the evidence, and affirmed the decision in its entirety*:

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* The Court of Appeals also affirmed the District Court ruling that Sangster's request for attorney's fees was grossly excessive. That ruling is not before this Court.

> "Sangster was not entitled to remain idle for eight years after quitting substantially equivalent employment even if her right to such employment with a different employer is given full recognition. We conclude that denial of back pay under the circumstances would not frustrate Title VII's remedial purposes." 633 F.2d at 868, App. A, pp. 14a-15a.

REASONS WHY THE WRIT SHOULD BE DENIED

I.

THE COURT BELOW FULLY CONSIDERED AND CORRECTLY DECIDED THE ISSUES

The general standards governing back pay awards in Title VII cases were established by this Court in Albemarle Paper Co. v. Moody, 422 U.S. 405 (1975). Both the Court of Appeals and the District Court below turned to the Albemarle standards, correctly applied them to the facts of this particular case, and provided "carefully articulated...reasons" for denying back pay, as required by Albemarle. 422 U.S. at 421 n.14.

Both lower courts accepted as their starting point the Albemarle standard that back pay is ordinarily required to remedy unlawful discrimination, 633 F.2d at 867, App. A, p.9a; App. C, p.66a, but in addition properly recognized that back pay is not mandatory in all Title VII cases, regardless of the circumstances. Both courts acknowledged, as this Court has often noted, that the back pay provisions of Title VII were "expressly modeled on the back pay provision of the National Labor Relations Act," Albemarle, 422 U.S. at 419 and n.11. Thus, while the duty was on defendants to show that Sangster "could have mitigated her damages", 633 F.2d at 868, App. A, p.12a; App. C, p.66a, the courts below correctly applied this Court's conclusion in Phelps Dodge Corp. v. NLRB, 313 U.S. 177, 198 (1941), that "[u]nder the NLRA, courts have long held that back pay is not to be

awarded when the evidence shows a willful loss of earnings."

Both lower courts applied the controlling legal standards to the facts presented, which revealed an individual who had voluntarily elected to remove herself entirely from the labor market the day she voluntarily quit her higher-paying supervisory position. The District Court concluded that Sangster "did nothing in mitigation of damages for the eight-year period. This plaintiff does not come anywhere near the minimum standards and her conduct was so deficient as to constitute an unreasonable failure to seek employment." App. C, pp. 69a-70a. The Court of Appeals concluded that "the evidence...was more than sufficient to satisfy appellees' burden of showing that substantially equivalent work was available to Sangster", 633 F.2d at 868, App. A, p.13a, and that "Sangster was not

entitled to remain idle after quitting substantially equivalent employment." 633 F.2d at 868, App. A, p.14a. Faithfully adhering to Albemarle, the Court of Appeals held that "denial of back pay under the circumstances would not frustrate Title VII's remedial purposes." 633 F.2d at 868, App. A, p.15a. Indeed, to sanction an individual's refusal to seek or accept any job other than the precise job (and for the same employer) which she was denied would be tantamount to rewriting the statute by omitting the mitigation principle Congress saw fit to include.

It is clear that the lower courts correctly applied this Court's controlling standards to the facts in this case in deciding to deny the back pay claim.

II.

THE DECISION OF THE COURT OF APPEALS IS NOT IN CONFLICT WITH ANY OTHER AUTHORITIES

Sangster's claim that there exists a "difference of opinion among the circuits as to whether a discriminatee who fails to mitigate should be denied all back pay" (Petition, pp. 24-25) is sheer fabrication. None of the cases cited suggest any basis for awarding back pay to a plaintiff who totally fails to mitigate by intentionally sitting idly while substantially equivalent employment is available, especially after she quit substantially equivalent, and arguably preferable, employment.

Hegler v. Board of Education of Beardon School District, 447 F.2d 1078 (8th Cir. 1971), John S. Doane Co. v. Martin, 164 F.2d 537 (1st Cir. 1947), EEOC v. Kallir, Philips, Ross, Inc., 420 F. Supp. 919 (S.D.

N.Y. 1976), and Bullard v. El Dorado Tire Co., 512 F.2d 901 (5th Cir. 1975), are all cited by Sangster for the undisputed principle that defendants bear the burden of proof on mitigation, a principle acknowledged and applied by both courts below. In none of these cases did the plaintiff voluntarily and completely remove herself from the labor market.

Similarly, no conflict exists between the decisions below and United States v. Lee Way Motor Freight, Inc., 625 F.2d 918 (10th Cir. 1979) or Grindstaff v. Burger King, Inc., 494 F. Supp. 622 (E.D. Tenn. 1980). In each of these cases, the plaintiffs were not, as Sangster incorrectly suggests, "nonmitigating claimants" (Petition, p. 20); they entered the job market and secured interim employment. Nevertheless, the courts not only deducted their actual interim earnings from lost

earnings in calculating back pay, but also deducted additional sums which the courts concluded could have been earned had plaintiffs been more diligent. In complete contrast, Sangster simply bypassed the job market and remained at home.

Sangster concedes that under applicable case law, "it is fair to deduct losses willfully incurred." Petition, p. 24. It is settled law under the National Labor Relations Act* that where, as here, an alleged discriminatee "fails to remain in the labor market," she is not entitled to back pay. NLRB v. Mastro Plastics Corp., 354 F.2d 170, 174 n.3 (2d Cir. 1965), cert. denied, 384 U.S. 972 (1965). Accord, NLRB v. Madison Courier, Inc., 505 F.2d 391, 397 (D.C. Cir. 1974). As the Court explained in NLRB v.

* As discussed above, the principles developed under the back pay provisions of the NLRA are applicable to Title VII.

Mercy Peninsula Ambulance Service, Inc., 589 F.2d 1014, 1019 (9th Cir. 1979), "[t]o hold otherwise would run contrary to the purposes of the back pay remedy, encourage idleness and reward slothfulness." This result is particularly appropriate where, as here, plaintiff voluntarily left mitigating employment which paid her more than the job she was alleged to have been discriminatorily denied. Muller v. United States Steel Corp., 509 F.2d 923 (10th Cir. 1975), cert. denied, 423 U.S. 825 (1975); NLRB v. Miami Coca-Cola Bottling Co., 360 F.2d 569 (5th Cir. 1966); NLRB v. Aycock, 377 F.2d 81 (5th Cir. 1967).

In sum, the purported "conflicts" are non-existent.*

* Sangster's attempt to suggest a conflict with state court decisions interpreting state law makes no sense since the issues herein are to be determined by federal law. Any suggested conflict with Franks v. Bowman Transportation Co., 424 U.S. 747 (1964), is also in error. Consistent with Franks, Sangster was accorded "rightful place" seniority by the courts below.

III.

THE ISSUES HEREIN DO NOT WARRANT REVIEW

There is a clear, consistent and principled line of legal authority for the issue Petitioner seeks to raise. The District Court and Court of Appeals below meticulously and properly applied the controlling principles to the facts presented and carefully articulated their reasons for denying back pay to Sangster. The outcome of this case turned entirely on the particular facts involved and affects only the individual plaintiff in this case. Accordingly, this case is not of sufficient importance to warrant review by this Court.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

STEPHEN B. MOLDOF

Of Counsel:

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Attorneys for Respondent Air Line Pilots Association, International

SUPPLEMENTAL APPENDIX

JUDGMENT OF THE DISTRICT COURT REGARDING BACK PAY AND ATTORNEY'S FEES

FILED NOV 14, 1977
William L. Whittaker,
Clerk

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

LINDA E. SANGSTER, an individual, Plaintiff, v. UNITED AIR LINES, INC., a Delaware corporation, and AIR LINE PILOTS ASSOCIATION, INTERNATIONAL, A labor organization, Defendants.	No. C 76 2426SC JUDGMENT

On October 14, 1977, the Court entered its Order and Judgment granting plaintiff's motion for summary judgment. Defendants were ordered to reinstate plaintiff Linda

E. Sangster to its employ as a flight attendant with full seniority.

On November 7, 1977, the Court tried the remaining issues of monetary relief and attorney's fees, and having made its Findings of Fact and Conclusions of Law, now

ORDERS, that plaintiff take nothing as to monetary relief, and that judgment on said monetary relief is to be entered against the plaintiff and in favor of defendants, and further

ORDERS, that plaintiff's attorney is awarded attorney's fees against defendants in the sum of $5,537.00 plus costs.

Dated: NOV. 10-77

/s/ Samuel Conti
United States District Judge

ENTERED IN CIVIL DOCKET NOV. 15, 1977